

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Benjamin Kruger	:	
-vs-	:	
Menard Electric Cooperative and	:	
Central Illinois Public Service	:	
Company	:	
Complaint requesting that	:	ESA 250
Central Illinois Public Service	:	
Company be directed to serve	:	
Complainant and that Menard	:	
Electric Cooperative be ordered	:	
to relinquish Complainant as an	:	
electric supply customer.	:	

ORDER

By the Commission:

On November 18, 1987, Benjamin Kruger ("Complainant") filed a verified Complaint with the Illinois Commerce Commission ("Commission") under the Illinois Electric Supplier Act ("ESA") against Menard Electric Cooperative ("Menard") and Central Illinois Public Service Company ("CIPS") seeking a Commission Order that CIPS and not Menard provide electric service to the Complainant.

Pursuant to notice duly given as required by law and by the rules and regulations of the Commission, hearings were held in this matter before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois, on January 29, March 7, April 7 and May 12, 1988. Appearances were entered by counsel on behalf of Complainant, Menard and CIPS, respectively, and by a member of the Commission's Engineering Department. Evidence was presented by the Complainant and Menard in support of their respective positions, and at the conclusion of the hearing on May 12, 1988, the record was marked "Heard and Taken." Briefs were filed by the Complainant, Menard and Staff, and a Reply was filed by CIPS.

The Hearing Examiner's Proposed Order was mailed by the Commission's Chief Clerk to all persons whose names appeared on the service list maintained for this docket under a cover letter dated October 21, 1988. On November 15, 1988, the parties filed a Stipulation stating that they agree to waive all rights to any post hearing proceedings and further agree that the Commission may enter an Order in conformance with the Hearing Examiner's Proposed Order.

The CIPS letter requests that Complainant be released by Menard in return for the earlier release of Mr. Eldon Rose by CIPS.

Positions of the Participants

Complainant contends that the April 20, 1987 letter is a contract by which CIPS agreed to release Eldon Rose and Menard agreed to release an equivalent customer to CIPS should similar conditions develop in the future. Complainant argues that the equivalency of Eldon Rose as a customer of CIPS and Benjamin Kruger as a customer of Menard was established.

CIPS stated in its Answer to the Complaint and in its Reply Brief that CIPS views the matter as essentially a dispute between Mr. Kruger and Menard. CIPS stands ready, willing and able to provide residential service to Mr. Kruger should the Commission so direct. CIPS takes no position on any factual matter developed in the record.

Menard contends that the letters of April 20, 1987 and December 9, 1986, do not constitute agreements but are releases. Menard argues that these letters were releases by CIPS to Menard for the convenience of CIPS, and that the portions of the letters indicating Menard would reciprocate with a similar customer meant that Menard would release a customer of theirs to CIPS when it was at Menard's convenience.

The Commission Staff concluded in its Brief that Menard is entitled to serve the Complainant.

Conclusion

Section 5 of the ESA provides that an electric supplier may not furnish electric service to a customer, which another electric supplier is entitled to serve, except with the written consent of such other electric supplier subject to the approval of the Commission as to such consent, if required. It is undisputed that CIPS was authorized to serve the Lott and Rose property, and Menard was authorized to serve Complainant.

The evidence shows that Mr. Lott requested Menard service to avoid a charge of \$4,000 to construct a single-phase overhead distribution line at least 2,331 feet to his residence to provide service. In addition, CIPS would have to add a neutral wire to their existing three-phase line to provide single-phase service to the Lott residence.

The evidence also shows that the Rose property is located 300 feet west of the Lott property and when Mr. Rose determined that CIPS would require a charge to construct a distribution line to his property he requested Menard electric service. It is reasonable to conclude that Messrs. Lott and Rose requested

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IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the letter dated April 20, 1987, from CIPS to Menard releasing Eldon Rose to Menard for electric service is hereby approved as a release of a customer pursuant to Section 5 of the ESA.

IT IS FURTHER ORDERED that the Complaint filed by Benjamin Kruger on November 18, 1987, be, and it is hereby, denied.

By order of the Commission this 7th day of December, 1988.

(SIGNED) MARY B. BUSHNELL

Chairman

(S E A L)

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CERTIFICATE

Re: ESA 250

I, ROSE M. CLAGGETT, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission with respect to all matters except those governed by Chapters 18a and 18c of The Illinois Vehicle Code.

I further certify that the above and foregoing is a true, correct and complete copy of order made and entered of record by said Commission on December 7, 1988.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on December 8, 1988.

Rose M. Claggett

Chief Clerk